

SERVICE DATE - MAY 19, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34284

SOUTHWEST GULF RAILROAD COMPANY—CONSTRUCTION AND OPERATION  
EXEMPTION—MEDINA COUNTY, TX

Decided: May 9, 2003

By petition filed on February 27, 2003, Southwest Gulf Railroad Company (SGR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate an approximately 7-mile line of railroad in Medina County, TX. The proposed line will extend from Vulcan Construction Materials, LP's (Vulcan Construction)<sup>1</sup> proposed quarry in the north central part of the county to a connection with the Del Rio Subdivision of Union Pacific Railroad Company (UP) at approximately milepost 250 near Dunlay. The primary purpose of the proposed construction is to provide rail service to the quarry site; however, the line would be available to serve other industries that might locate in the area in the future. SGR requests that we conditionally grant the exemption, subject to our completion of the required environmental review. We will grant a conditional exemption and issue a final decision after completion of the environmental review process.

BACKGROUND

SGR is a new company that does not own or operate any rail lines, but intends to hold itself out as a common carrier and anticipates that its annual revenue will qualify it as a Class III rail carrier.<sup>2</sup> SGR states that it may at some point enter into an agreement to allow an existing rail carrier to operate the line.

Vulcan Materials, through Vulcan Construction (collectively, Vulcan), is working towards the development of a stone quarry in Medina County, which is just west of Bexar

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<sup>1</sup> Vulcan Construction is a subsidiary of Vulcan Materials Company (Vulcan Materials), which is affiliated through common ownership with SGR. Vulcan Materials is a producer of aggregate, composed primarily of crushed stone, sand and gravel.

<sup>2</sup> SGR believes that the area around the proposed line will be attractive for future economic development by other businesses because, in addition to a rail line, the property values are relatively low, there is open area available for development, it is close to a major market (San Antonio) and to Mexico, and is near major interstate highways.

County where San Antonio is located. According to SGR, the site for the quarry is in excess of 1,700 acres.

SGR maintains that there is a local market in the San Antonio area for the aggregate that the planned quarry would produce, but the primary market would be the eastern part of Texas, including the Houston area. SGR asserts that to get the aggregate to that market most efficiently, Vulcan intends to rely on rail transportation from the quarry.<sup>3</sup>

To serve the needs of Vulcan and any other shipper that may locate on or near the proposed line, SGR plans to construct and operate a single-track rail line between the planned quarry site and UP's line. The proposed line would cross relatively dry and flat farmland and pastureland and would not traverse any incorporated or densely populated areas or cross any other rail lines. The line is expected to cross one paved state farm-to-market road, one paved county road and three unpaved county roads. However, the precise location of the line will be based on environmental reviews and final engineering work.<sup>4</sup> SGR asserts that it has met with and made UP fully aware of the planned rail line.

#### DISCUSSION AND CONCLUSIONS

The construction and operation of railroad lines require prior Board approval under 49 U.S.C. 10901. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Based on the information provided, we conclude that detailed scrutiny of the proposed construction and operation under 49 U.S.C. 10901 is not necessary to carry out the rail transportation policy. The requested exemption will promote that policy by providing a rail service option to Vulcan and, thereby, ensuring the development of a sound rail transportation system with effective competition among rail carriers and other modes [49 U.S.C. 10101(4)]; fostering sound economic conditions in transportation [49 U.S.C. 10101(5)]; reducing regulatory barriers to entry [49 U.S.C. 10101(7)]; and providing for the expeditious handling and resolution of this proceeding [49 U.S.C. 10101(15)]. Unless determined otherwise following the environmental analysis, nothing on the record indicates that other aspects of the rail transportation policy will be adversely affected.

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<sup>3</sup> Vulcan relies on rail transportation at other quarry sites it has developed in Texas and other states.

<sup>4</sup> The proposed line will not traverse federal lands and, with the exception of the road crossings, no state-owned property will be traversed.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed transaction will enhance competition by providing Vulcan with a rail transportation option to go along with existing motor carrier options. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

SGR has requested<sup>5</sup> that, consistent with our usual practice in rail construction cases, we issue a preliminary decision addressing the transportation-related issues prior to completion of our environmental review, which we are doing here.<sup>6</sup> According to SGR, this action will facilitate SGR's ability to move forward with various engineering and other plans relating to the rail line. But we cannot, of course, authorize the construction until we have completed our environmental review. Therefore, this exemption will not be effective, and no construction can begin, until our environmental review process is concluded.

After the environmental review process has been completed, we will issue a further decision addressing the environmental issues, and making the exemption effective at that time if appropriate, subject to mitigation conditions if necessary. See Missouri Mining, Inc. v. ICC, 33 F.3d 980 (8th Cir. 1994). This decision does not in any way prejudge our ultimate decision, and will not diminish our capacity to address environmental matters in rendering a final decision. Illinois Commerce Comm'n v. ICC, 848 F.2d 1246, 1259 (D.C. Cir. 1988), cert. denied, 488 U.S. 1004 (1989). Construction may not begin until our final decision in this proceeding has been issued and becomes effective.

As conditioned, this action will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we conditionally exempt SGR's construction and operation of the above-described line from the prior approval requirements of 49 U.S.C. 10901, subject to our further consideration of the anticipated environmental impacts of the proposal.

2. On completion of the environmental review, we will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate, subject to any necessary conditions, thereby allowing construction to begin.

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<sup>5</sup> SGR Petition at 8-9.

<sup>6</sup> See Great Salt Lake and Southern Railroad, L.L.C. – Construction and Operation – In Tooele County, UT, STB Finance Docket No. 33824 (STB served Dec. 15, 2000).

3. Notice will be published in the Federal Register on May 19, 2003.
4. Petitions to reopen must be filed by June 9, 2003.
5. This decision is effective 30 days from the date of service of this decision.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams  
Secretary